

The South Carolina Court of Appeals

APPEAL FROM YORK COUNTY

Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2022-000548

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SC Court of Appeals

William Bronson,

Appellant,

Vs.

Cray, Inc. and York County,

Respondents.

APPELLANT'S REPLY BRIEF

November 18, 2022

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STATEMENT OF THE ISSUES

- I. Did the Trial Court err in dismissing the case with prejudice pursuant to Respondents’ Rule 12 (b) (6) motions when the Respondents argued matters outside of the Complaint and the court included those as part of its basis for a decision?

- II. Did the Trial Court err in deciding the Respondent York County complied with the law when the statute upon which the Respondents Reply was unconstitutional and therefore is void ab initio?

ARGUMENT

1. The Respondents' arguments substantiate that the court erred in dismissing this case pursuant to rule 12(b)(6) SCRPC.

Appellant's position is that the trial court erred in dismissing this action pursuant to rule 12(b)(6) because it considered facts not within the four corners of the complaint and did not resolve all inferences in favor of the Appellant. Both Respondents' briefs substantiate the Appellant's position. A 12(b)(6) motion tests the legal sufficiency of a pleading. All allegations of the complaint are deemed admitted. The Respondent Cray refers to the Department of Revenue's publication or memorandum which is not part of the record. The publication was not before the trial court. The motion was not a summary judgment motion. Both Respondents are relying upon evidence outside the record to argue that the trial court properly decided the case. Such references are not even persuasive in this action and should not be referenced in the appeal.

In addition, both Respondents acknowledge the law that a statute which is deemed unconstitutional is void ab initio unless such determination would create widespread havoc, spawn unnecessary litigation or result in flagrant injustice. The problem is the Respondents want a court to assume such adverse and dire results would occur. None of the parties presented any evidence that the determination that this statute is void ab initio would create any issues. There is no evidence that there is any other taxpayer other than Respondent who is in the position that exists in this case as it is a strange and almost unique situation. The Respondents' position is merely speculation.

Respondent Cray references the case Herndon v. Moore, 18 S.C. 339, 350-358 (1883) as support of his argument that a determination could result in widespread havoc and litigation;

however, in Herndon, there was a period of 10 years where property had been sold throughout the state under a statute which was then determined to be unconstitutional. Herndon was before the court at a trial and there was evidence upon which the court could make its determination. The time period was 10 years where property had been sold throughout the state under a statute that was subsequently determined to be unconstitutional as to the jurisdiction of the court to order such sales. In the case at hand, the time period is less than a year during which the unconstitutional statute was in effect. There is no evidence that anyone other than the Appellant has been adversely affected by this unique situation. The Respondents want this court to assume others will be affected and there is no evidence of anyone else affected. In addition, that Respondents argument is based upon the facts and not the legal sufficiency of the allegations of the complaint and therefore is not a basis to dismiss pursuant to Rule 12(b)(6).

In addition, no evidence exists to support the contention that Respondent Cray even knew that the statute extending the redemption period had been passed allegedly granting him an extra year or when he became aware that his right to redeem was theoretically extended. In this case, the evidence plead in the complaint is that the County sent Cray notice of the right of redemption on September 21, 2020 pursuant to the statute that was in effect at the time and that he had until November 5, 2020 to redeem. There is no evidence he knew of the existence of the unconstitutional statute. There is no evidence as to when he redeemed and/or paid his property taxes or if he even paid the property taxes. With the statute being determined to be unconstitutional, then the redemption letter was sent timely and Cray did not redeem timely.

Both Respondents argue that this court should affirm based upon facts reasonably deductible from the complaint. Again, the standard with a 12(b)(6) motion is to take the allegations of the complaint as true. The facts of the complaint must be deemed admitted as true and all inferences must be considered in light most favorable to the Appellant. The Respondents basically are inverting this theory. Therefore, the Respondents arguments themselves support the position that the case should not have been dismissed pursuant to Rule 12(b)(6).

2. Contrary to the Respondents' assertion, the notice of redemption Cray was sent was not defective as it was sent pursuant to and consistent with the law in effect at the time.

At the time Cray was sent his notice of redemption on September 21, 2020, his right to redemption ended on November 5, 2020. As such, the only notice which Cray received set forth that his time to redeem ended on November 5, 2020 and there is no evidence that any other notice was ever sent to him. At the time the notice was sent, Appellant had already bid the property in and paid his money for purposes of obtaining title to the property. The statute which extended the time was determined to be unconstitutional and became effective on September 30, 2020. Cray did not receive any notice that the time period had been extended. Cray did not redeem on or before November 5, 2020. The statute which theoretically extended the time was determined to be unconstitutional on June 30, 2021 prior to the theoretical extension of time. No notices had been sent to Cray of those facts. Since the notice was timely given to Cray as to his right to redeem and that right to redeem ended on November 5, 2020, his rights to redeem were gone.

Once the statute was determined to be unconstitutional, since Cray had been sent the notice of his right to redeem and he did not redeem during that time period, the county did comply with the constitutional statutes in effect. Since the county clearly complied with the statute when it sent the notice on September 21, 2020, Cray's right to redeem was gone and the Appellant should have received title. Appellant had a vested property right in this property as he had bid on the property, deposited his money which had been in the counties bank account and Appellant was expecting title to the real estate. No evidence exists to support Respondents position that the county complied with the statute in effect in not issuing title to the Appellant. There is no evidence to demonstrate that the county determined or declared the sale, which occurred in 2019, void before Act 174 of 2020 was determined to be unconstitutional. As such, the trial judge erred in dismissing this action.

CONCLUSION

For the above reasons, the Appellant requests this court to reverse the trial judge and determine and direct the Respondent County to issue a tax deed to the Appellant or in the alternative, to remand this case to the trial court, vacating the trial judge's decision which would leave in place the complaint, the lis pendens and enables the parties to develop a record as it relates to the issues in this case.

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Appellant's Reply Brief complies with Rule 211(b), SCACR.

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